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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 563

JOINT ANTI-FASCIST REFUGEE COMMITTEE, NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC., ET AL., PETITIONERS

v.

JAMES P. McGRANERY, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

A single opinion was filed by the United States District Court for the District of Columbia for both these cases and a companion case, *International Workers Order, Inc.* v. *McGrath et al* (R. 49-58). It is reported at 104 F. Supp. 567.

JURISDICTION

The judgments of the District Court were entered on July 2, 1952 (R. 58, 96). On July 31, 1952, notices of appeal were filed (Tr. 112, 172). By orders of the District Court dated September 3, 1952 (Tr. 113, R. 97), and October 15, 1952 (Tr. 116, R. 99), the time for filing the records on appeal and docketing the appeals was extended to and including October 29, 1952. On October 29, 1952, petitioners docketed their appeals with the Court of Appeals for the District of Columbia Circuit. The cases have not been submitted to, heard or decided by the Court of Appeals (R. 103). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, upon remand of these cases to the District Court after this Court's decision in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, and the filing of answers and affidavits by the Attorney General, the District Court erred in holding that the pleadings raised issues of fact for trial and abused its discretion in denying petitioners' motions for a preliminary injunction.

EXECUTIVE ORDER INVOLVED

The text of Executive Order 9835, 12 F. R. 1935, is set forth in the record at pp. 18-26.

STATEMENT

These are actions attacking the validity of Executive Order 9835, issued on March 21, 1947, which

established the President's Employees Loyalty Program in the Executive Branch of the Government. In November, 1947, the Attorney General furnished the Chairman of the Loyalty Review Board of the Civil Service Commission with a list of organizations and groups determined by him to fall within the description of Part III, Section 3, of the Executive Order (R. 27). Petitioners were included in this list as "subversive" (R. 30). In December, 1947, the Chairman of the Loyalty Review Board transmitted a copy of the Attorney General's list to the various departments and agencies pursuant to Part III, Section 3a, of the Executive Order (R. 32). In September, 1948, the Attorney General divided the listed organizations into the separate categories named in the Executive Order, and petitioners were designated as "communist" organizations. This, too, was transmitted by the Chairman of the Loyalty Review Board. 13 F. R. 1635.

In February and June, 1948, petitioners instituted these proceedings in the District Court for the District of Columbia to enjoin respondents, the Attorney General and the Chairman and members of the Loyalty Review Board, from designating and publicizing the names of petitioners as "communist" organizations, to direct respondents to remove petitioners' names from the list, to make a public statement of this removal, and to take no action based on the inclusion of their names in the list of designated "communist" organizations.

Petitioners further prayed for a declaratory judgment that the Executive Order is unconstitutional. (R. 1-9, 60-73.)

Respondents, in turn, moved to dismiss the complaints for want of a justiciable controversy between the parties and for failure to state a claim upon which relief can be granted (Record in No. 7, October Term, 1950, p. 17; Record in No. 8, October Term, 1950, p. 28). In June, 1948, the district court dismissed the complaint in the *Refugee Committee* case and denied the motion for a preliminary injunction (Record in No. 8, October Term, 1950, pp. 28-29). In February, 1949, the complaint in the *National Council* case was similarly dismissed (Record in No. 7, October Term, 1950, p. 19).

The Court of Appeals for the District of Columbia Circuit affirmed. 177 F. 2d 79.[1] (Record in No. 8, October Term, 1950, p. 49; Record in No. 7, October Term, 1950, p. 20.) A petition for rehearing in the *Refugee Committee* case was denied in September, 1949 (Record in No. 8, October Term, 1950, p. 51).

On April 30, 1951, this Court reversed and remanded the cases to the district court with instructions to deny the respondents' motions that the complaints be dismissed for failure to state a claim upon which relief can be granted. *Joint*

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[1] The *National Council* case was affirmed *per curiam* in an unreported opinion, which relied on the decision in the *Refugee Committee* case.

Anti-Fascist Refugee Committee v. *McGrath*, 341 U. S. 123, 142. Five members of the Court concurred in the judgment, but no opinion of the Court was announced. Three justices dissented, and one took no part.

All of the majority of the Court were of the view that on the pleadings before the Court, the complaints stated a cause of action. Only four of the majority justices, however, reached the constitutional questions presented. Justices Black, Frankfurter, Douglas and Jackson expressed the view that the designation by the Attorney General of petitioners as "communist" organizations would be unconstitutional in the absence of adequate notice and hearing (341 U. S. at 143, 172-174, 177-178, 186). Suggesting that the Executive Order itself is not invalid on this score, Mr. Justice Frankfurter further stated that nothing in the Executive Order requires the Attorney General to deny organizations an opportunity to present their case (341 U. S. at 172).

The fifth majority justice found it unnecessary to reach the constitutional issues on the state of the pleadings then before the Court. In an opinion in which Mr. Justice Douglas joined, Mr. Justice Burton stated that the issue was whether, in the face of the facts alleged in the complaints and therefore admitted by the motions to dismiss, the Attorney General was authorized by the Executive Order to designate petitioners as "communist" organizations (341 U. S. at 124-125). Reading the Executive Order as containing no express or im-

plied attempt to confer power on anyone to act arbitrarily or capriciously, Mr. Justice Burton declared that the action taken by the Attorney General was unauthorized by the Executive Order in light of the allegations in the complaints of an absence of any factual basis for the designations (341 U. S. at 136-138). In conclusion, he stated that (*id.* at 141-142):

> We have assumed that the designations made by the Attorney General are arbitrary because we are compelled to make that assumption by his motions to dismiss the complaints. Whether the complaining organizations are in fact communistic or whether the Attorney General possesses information from which he could reasonably find them to be so must await determination by the District Court upon remand.

Petitioners did not file a petition for rehearing or for clarification of the mandate. Upon remand to the district court, respondents filed their answers to the complaint on August 23, 1951 (R. 13-18, 73-81). The answers admit that petitioners did not receive any notice or hearing with respect to their designation by the Attorney General as "communist" organizations. With respect to petitioners' allegations as to the nature of their activities, the answers allege that respondents are without knowledge or information sufficient to form a belief as to the truth of such allegations and aver, upon information and belief, that such allegations "do not constitute a statement com-

plete in every material respect as to the nature, policy, and activities" of the petitioners (R. 14-15, 76-78).

On December 12, 1951, petitioners filed motions for judgment on the pleadings or, in the alternative, for summary judgment, and for a preliminary injunction, based upon the pleadings, the affidavits previously filed, and the affidavits submitted therewith (R. 34-35, 51, 82). In turn, respondents moved for summary judgment, based upon the pleadings and the affidavits of the then Attorney General, J. Howard McGrath (R. 51, 39-44, 90-96). The Attorney General's affidavits were also offered in opposition to petitioners' motions, as was an affidavit of Hiram Bingham, Chairman of the Loyalty Review Board (see *infra,* pp. 13-14, n. 2) (R. 39, 45, 90).

The affidavits of the Attorney General each recite that petitioners were designated as "communist" organizations by the then Attorney General, Tom C. Clark, acting under authority of the Executive Order, "after appropriate investigation and determination * * * on the basis of information in his possession, including confidential investigative reports of the Federal Bureau of Investigation, memoranda prepared by attorneys of the Department, and upon the recommendation of the Solicitor General, the Assistant Attorneys General, and the Assistant Solicitor General, and a careful study of all * * *" (R. 40, 91). In his capacity as Attorney General of the United States,

Mr. McGrath stated that he was affirming and continuing such designations (R. 40, 91).

The affidavits in each case then recite as follows (R. 40-41, 91-92):

> Much of the evidence and information upon which this designation rests is derived from confidential reports of investigation conducted by the Federal Bureau of Investigation. Public policy and national security will not permit the disclosure of the contents of many confidential reports nor the presentation by way of testimony through witnesses of any of the confidential information contained in such reports, since such revelation would be detrimental to the national security and would render valueless for future use confidential sources of information essential to the protection of our national security.
>
> Within the limits of national security, however, I submit the following summary of information upon which, in part, the designation of [petitioners], pursuant to Section 3, Part III of Executive Order 9835, is based. This summary does not reflect the complete factual basis upon which the determination rests but only that part which can be disclosed without jeopardizing the national security. Such information is offered to satisfy the court that this designation was not arbitrary, capricious, or without foundation in fact.

Continuing, each affidavit contains certain statements concerning the character of the Communist Party of the United States, its objectives

and methods of operation (R. 41-42, 92-93). Thereafter, each affidavit sets forth, to the extent permitted by considerations of national security, the information with respect to each petitioner upon which the Attorney General made his determinations.

With respect to the Refugee Committee, the affidavit states that the Committee was organized by order of the Communist Party; that the Communist Party delegated one of its members to supervise the funds of the Committee; that the National Chairman and other officers of the Committee were chosen by the Communist Party; that reports of the Committee were made to the National Committee of the Communist Party; that a substantial number of the officers of the Committee, including members of its National Board of Directors, as well as its other national and local officers, were members of the Communist Party; and that the Committee was run by the Political Committee of the Communist Party, specifically through Eugene Dennis and Jack Stachel (R. 42-43).

Further, that the Communist Party has contributed money to the Committee and to activities sponsored by the Committee; that the Committee has received full support from the official publications of the Communist Party; that the Committee has never deviated from the policies advanced and espoused by the Communist Party; that the ostensible purpose of the Committee to aid individuals who fought for the Spanish Republican Government is but a front, behind which the Com-

mittee supported and assisted, in the guise of refugees from fascist persecution, secret agents of the Government of the Soviet Union; and that the Committee was organized by the Communist Party with the real, specific and undisclosed purpose of bringing such agents into the United States—*e. g.* Gerhart Eisler—and supporting them during their stay here, while they assisted in supervising the subversive activities of the Communist Party (R. 43-44).

With respect to the National Council, the affidavit recites that the Council was organized under the direction of the Communist Party after the subject of forming such an organization had been discussed at meetings of the Politburo and the National Committee of the Communist Party; that the Politburo of the Communist Party appointed the officers of the Council; that the Political Committee of the Communist Party ran the activities of the Council; that the executive officers of the Council were members of the Communist Party; that the Council sought advice and instructions from the Politburo of the Communist Party; and that its decisions regarding the Council were strictly complied with by the Council (R. 93, 94).

Further, that the financial affairs of the Council were supervised by the Communist Party; that the Communist Party gave financial aid and other support to the Council; that through its meetings, publications, rallies, and other functions, the Council gave aid and support to the Communist Party; that the Council sent personnel to Communist Party Headquarters to help address letters

and to aid in the mailing of material; that throughout its existence, the Council has never knowingly deviated from the views and policies of the Communist Party; and that whenever such views and policies have conflicted with the position taken by the government of the United States, the Council has opposed the position of the United States (R. 94-95).

Petitioners then moved to strike the Attorney General's affidavits on the ground that the affidavits did not meet the requirements of Rule 56(e) of the Federal Rules of Civil Procedure, that "supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein", and that "sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith" (R. 53-54).

After a hearing, the district court filed an opinion on April 23, 1952 (R. 49-58). Denying respondents' motions for summary judgment, the court held that the question whether the Attorney General's designations were reasonable in the light of the information then possessed by him could not be decided on motion for summary judgment. The district court stated that this issue could properly be resolved only by receiving evidence concerning the factual matters upon which the Attorney General based his action and by determining whether, in the light of such evidence, there was a reasonable basis for his action. (R. 56.) Continuing, the dis-

trict court observed that "the affidavit filed by the Attorney General, stating, as it does, factual matters which he believed to be true, and which, if true, would undoubtedly justify the conclusion which was reached, might well be treated as an amendment to his answer to the end that all permissible and all admissible data relating to such factual matters could be considered by the Court" (R. 56-57).

On the same reasoning, the district court denied petitioners' motions for judgment on the pleadings, or in the alternative, for summary judgment. Declining to pass upon petitioners' argument that the action taken by the Attorney General is invalid, regardless of the factual basis which he had for taking such action, in the absence of adequate notice and hearing to petitioners (R. 57), the district court pointed out that this view had not been adopted by the majority of this Court and that "that question was left * * * for consideration in the light of the action which might be taken by [the district court] after it had examined into and determined the factual basis upon which the designations complained of were made by the Attorney General" (R. 57). Stating that "with respect to the admitted fact that there was no adequate notice or hearing, the cases are now in precisely the same posture that they were when considered by the Supreme Court * * * [which] did not see fit to deal with that question then," the district court declared that it saw no reason why the court "should deal with it now before it has had opportunity to examine into the factual basis upon which the

designations complained of were made" (R. 57).

Petitioners' motions for a preliminary injunction were also denied. In this connection, the district court stated that (R. 57-58):

> * * * it must be considered that the designations complained of, and concerning which plaintiffs claim that irreparable injury threatens, occurred in the year 1947. From the assertions made by plaintiffs, they have already suffered substantially all of the injury which they claim resulted from the action, the legality of which is to be in these cases determined. It does not appear that injunctive relief, if now granted, would, or could, afford to them the protection which injunctive relief is ordinarily intended to afford, and it does appear that at this late date, substantially five years after the action complained of, its effect would be to bring about a change in governmental procedures which have been in operation for a long period, and which ought not to be altered unless and until it is determined that the action in question is illegal and invalid. Balancing the equities of the parties and the public interest, I must conclude that the motions for injunctive relief *pendente lite* should be denied.[2]

On July 2, 1952, the district court entered its judgment in each case denying petitioners' motions for judgment on the pleadings, for summary

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[2] As noted above, p. 7, respondents also offered the affidavit of Hiram Bingham, Chairman of the Loyalty Review Board, in opposition to petitioners' motions for a preliminary injunction. The affidavit states that the removal of petitioners' names from the list of designated organizations *pendente lite*

judgment, and for a preliminary injunction, and denying respondents' motion for summary judgment (R. 58-96). On July 31, 1952, notices of appeal were filed (Tr. 112, 172). On October 29, 1952, petitioners docketed their appeals with the Court of Appeals for the District of Columbia Circuit,[3] and on January 23, 1953, filed their petition for certiorari. The cases have not been sub-

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would result in irreparable injury to the public interest. In brief, the affidavit recites that the Attorney General's list provides a uniform guide for the adjudication of loyalty cases by more than 200 Agency Loyalty Boards and 14 Civil Service Commission Regional Loyalty Boards; that the Agency Loyalty Boards have adjudicated 4,657 cases as of November 30, 1951, the Regional Loyalty Boards have adjudicated 5,492 cases as of December 8, 1951, and that the Loyalty Review Board has heard on appeal 334 cases and has post-audited some 11,000 cases as of December 30, 1951; that the successful operation of the Federal Employees' Loyalty Program depends upon the existence of a single and uniform guide as to the character of given organizations; and that none of the Loyalty Boards has facilities for making investigations on its own account to determine whether a given organization is within the classification set forth in the Executive Order (R. 46-47). The affidavit further recites that the removal of an individual organization from the Attorney General's list *pendente lite* would have an incalculably damaging effect on past, present, and future determinations under the Executive Order. To do so would mean that decisions in all cases involving membership or activities in such organization would have to be held in abeyance pending final judicial determination of the legality of the designation. As a result, there would remain on the Federal rolls for an indefinite period individuals who otherwise should be removed, applicants who are members of or active in any such organization would be entitled to employment even though such employment might constitute a grave hazard to national security, and adjudicated cases would be subject to petitions for reopening. (R. 48.)

[3] By orders of the district court dated September 3, 1952 (Tr. 113, R. 97), and October 15, 1952 (Tr. 116, R. 99), the time for filing the records on appeal and docketing the appeals was extended to and including October 29, 1952.

mitted to, heard or decided by the court of appeals (R. 103).

Subsequent to the date on which the district court delivered its opinion, but prior to the date on which judgments were entered, J. Howard McGrath was succeeded by James P. McGranery as Attorney General. On June 12, 1952, counsel for petitioners wrote Attorney General McGranery inquiring whether he intended to affirm and continue the designations made by his predecessor of petitioners as "communist" organizations pursuant to the Executve Order. After due consideration, Attorney General McGranery advised petitioners' counsel that he did affirm and continue such designations and, with his consent, orders were entered by the court of appeals on November 7, 1952, substituting James P. McGranery as respondent in the place and stead of J. Howard McGrath (R. 100-101).

On January 21, 1953, James P. McGranery was succeeded by Herbert Brownell, Jr., as Attorney General.

ARGUMENT

In advance of any hearing in the court below, petitioners have applied to this Court for a writ of certiorari before judgment to review the district court's denial of petitioners' motions for preliminary injunctions.[4] Petitioners argue that "no use-

[4] Since the denial of the motions for judgment on the pleadings or, in the alternative, for summary judgment are not final orders, the only reviewable orders are the denials of the motions for a preliminary injunction.

ful purpose would be served and much harm would be done the petitioners by subjecting them to the further delays of an appeal to the Court of Appeals" (Pet., p. 11).

In our view, these cases, in their present posture, do not present the exceptional and extraordinary circumstances which would justify the granting of certiorari before consideration of the cases by the court of appeals. Not only is the granting of certiorari before judgment "a power not ordinarily to be exercised" (see *The Three Friends*, 166 U. S. 1, 49; cf. *United States* v. *Montgomery Ward & Co.*, 324 U. S. 858; *United Steelworkers of America, CIO, et al.* v. *United States, et al.*, No. 523, this Term, certiorari denied, January 5, 1953), but this Court has generally been reluctant to grant certiorari simply to determine whether the trial court abused its discretion in denying an interlocutory injunction (see Robertson & Kirkham, *Jurisdiction of the Supreme Court of the United States* (1951 ed.), p. 671, n. 8). Petitioners to the contrary, the issue at this stage of the proceedings, as we shall show, is not whether the action of the Attorney General under Executive Order 9835 in designating petitioners as "communist" organizations without notice and hearing is unconstitutional, but whether the district court's denial of a preliminary injunction is an abuse of discretion. Cf. *Mayo* v. *Lakeland Highlands Canning Co.*, 309 U. S. 310, 317; *Alabama* v. *United States*, 279 U. S. 229, 231. We think it clear that the district court

properly exercised its discretion in the premises and that the judgments below are fully in accord with the mandate of this Court in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123.

1. Petitioners concede that this Court did not hold in *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra,* that the action of the Attorney General challenged herein is invalid for want of adequate notice or hearing (Pet., p. 8). Although the majority of the Court held that the district court had erred in dismissing the complaints for failure to state a claim upon which relief can be granted, only four justices expressed the view that the Due Process Clause of the Fifth Amendment required adequate notice and a hearing at some stage before the Attorney General's designations became final. The fifth member of the majority, Mr. Justice Burton, speaking for himself and Mr. Justice Douglas, found it unnecessary to reach that question.

On the pleadings then before the Court, Mr. Justice Burton stated that the issue was whether, in the face of the facts alleged in the complaints and therefore admitted by the motions to dismiss, the Attorney General was authorized by the Executive Order to include petitioners in the list of organizations designated by him as "communist". 341 U.S. at 124-125. Reading the Executive Order as containing no express or implied attempt to confer power upon anyone to act arbitrarily and

capriciously, he expressed the view that the Attorney General had exceeded his authority under the Executive Order in the light of the uncontradicted allegations in the complaints of the absence of any factual basis for the designations. 341 U.S. at 136-137. In conclusion, Mr. Justice Burton stated that "whether the complaining organizations are in fact communistic or whether the Attorney General possesses information from which he could reasonably find them to be so must await determination by the District Court upon remand." 341 U.S. at 141-142.

Upon remand to the district court, respondents put in issue by answers and affidavits the allegations of the complaints as to the absence of any factual basis for the Attorney General's designations. Refusing to pass upon petitioners' argument that the Attorney General's action could not be valid in the absence of notice and hearing regardless of the factual basis which he had for taking such action, the district court stated that it would not consider that question before "it has had opportunity to examine into the factual basis upon which the designations complained of were made" (R. 57).

Plainly, the district court's ruling that it would refrain from deciding constitutional issues unless absolutely necessary to a decision of the cases is fully in accord with this Court's mandate and with well established principles of constitutional adjudication. Should the district court find at the trial of the cases that the Attorney General possesses no information from which he could rea-

sonably have determined petitioners to be "communist" organizations, it would obviously be unnecessary for the district court to decide the constitutional questions petitioners raise.[5]

Petitioners' contention that the district court erred amounts to no more than the gratuitous assertion that respondents do not intend at any stage to introduce admissible evidence which would support the listing, that "there do not appear to be any issues at all which would be litigated at a trial" (Pet., p. 9). This suggestion, we submit, is wholly without foundation. Although, because of considerations of national security, respondents are unable to reveal all the information upon which the Attorney General acted, respondents are prepared to prove at the trial of the cases that the information which can be disclosed fully supports the action taken by the Attorney General.

Accordingly, petitioners' argument that the district court abused its discretion in denying a preliminary injunction is groundless. Petitioners concede that a preliminary injunction may be denied "where it appears that a trial might result in a judgment for defendant" (Pet., p. 9). As we have shown, there are issues of fact for trial, and, as the district court observed (R. 56), the facts alleged by respondents "if true, would undoubtedly

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[5] "If two questions are raised, one of non-constitutional and the other of constitutional nature, and a decision of the non-constitutional question would make unnecessary a decision of the constitutional question, the former will be decided." *Alma Motor Co.* v. *Timken Co.*, 329 U.S. 129, 136-137; cf. *Rescue Army* v. *Municipal Court*, 331 U.S. 549, 571.

justify the conclusion which was reached" by the Attorney General.[6]

That the district court has not yet had an opportunity to inquire into the evidence demonstrates convincingly that no useful purpose would be served by the granting of certiorari at this time. In effect, petitioners are asking this Court to reconsider its prior decision and to pass upon constitutional questions which it declined to reach in advance of a determination whether petitioners are in fact "communist" organizations or whether the Attorney General possesses information from which he could reasonably find them so to be. We submit that, having failed to file a timely petition for rehearing, petitioners' present indirect attempt to obtain reconsideration comes too late.

2. Moreover, in view of the resignation of respondent McGranery on January 20, 1953, and the succession of Herbert Brownell, Jr., on January 21, 1953, to the office of Attorney General of the United States, the granting of certiorari at this time would be particularly inappropriate.[7] Under Rule 19(4) of the Rules of this Court, "a substitution of the successor in office may be effected only

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[6] Petitioners also contend that the district court erred in "balancing the equities" in favor of the overriding public interest (see *supra*, pp. 13-14, n. 2), but do not suggest that the conclusion reached by the district court is in conflict with any decision of this Court. To the contrary, the decisions of this Court fully support the action of the district court. Cf. *Yakus* v. *United States*, 321 U.S. 414, 440-441.

[7] Petitioners have not yet moved to substitute Attorney General Brownell as respondent in the place and stead of respondent McGranery.

where a satisfactory showing is made within six months after the death or separation from office." Such showing could be made in these cases only if Attorney General Brownell affirms and continues the actions of his predecessors and declines to afford petitioners a hearing. Since Attorney General Brownell has only recently assumed office, however, it is apparent that he has not yet had sufficient opportunity to consider the matter. It is equally apparent that any such determination on his part, affecting as it does the national security and the future of governmental procedures which have been in operation for some six years, is not one which can be made without thorough consideration.[8]

3. Finally, we think it pertinent to point out that petitioners' contention that expeditious treatment by this Court is required is at odds with petitioners' conduct in these proceedings. As shown above, pp. 3-4, 6-7, 13-15, petitioners have not pressed the prosecution of these cases. Upon remand to the district court, petitioners delayed some five months after the filing of respondents' answers before filing their motions for judgment on the pleadings and for a preliminary injunction. Petitioners did not file the instant petition for a writ of certiorari

[8] Respondent McGranery deliberated approximately five months before reaching the conclusion to affirm and continue the actions of his predecessors. See *supra*, p. 15. Compare also the action of District Judge Kirkland in granting Attorney General Brownell ninety days in which to decide whether he wishes to continue the current grand jury investigation of certain oil companies for alleged violation of the anti-trust laws. See The Washington Post, January 28, 1953, p. 13, col. 4.

before judgment until some six months after the entry of judgment by the district court. In this light, we submit that petitioners are hardly in a position to urge that these cases present the urgent and extraordinary circumstances which would justify the granting of certiorari at this time.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY, 1953.

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